

1 ALEXANDRA S. KELLY (SBN 305811)
akelly@btlaw.com

2 BRIAN NGUYEN (SBN 336704)
brian.nguyen@btlaw.com

3 **BARNES & THORNBURG LLP**

2029 Century Park East, Suite 300

4 Los Angeles, California 90067

Telephone: (310) 284-3880

5 Facsimile: (310) 284-3894

6 Attorneys for Defendants Audiophile Music Direct
Inc., d/b/a Music Direct, a Nevada Corporation;
7 Mobile Fidelity Sound Lab, Inc., an Illinois
corporation

8
9
10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11
12 MARK ALLEN, an individual; and on
13 behalf of himself and all others
similarly situated,

14 Plaintiff,

15 v.

16 AUDIOPHILE MUSIC DIRECT INC.,
17 d/b/a Music Direct, a Nevada
corporation; MOBILE FIDELITY
18 SOUND LAB, INC., an Illinois
corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

Case No. 2:22-cv-8146-GW-MRWx

**DEFENDANT MOBILE FIDELITY
SOUND LAB, INC.'S ANSWER TO
SECOND AMENDED
COMPLAINT; DEMAND FOR
JURY TRIAL**

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 Defendant MOBILE FIDELITY SOUND LAB, INC. ("MoFi" or
 2 "Defendant") hereby answers Plaintiff Mark Allen's ("Plaintiff") Second Amended
 3 Complaint ("SAC") as follows:

4 Defendant denies each and every allegation, statement, matter, and thing
 5 contained in Plaintiff's SAC except as is expressly admitted or alleged hereinafter.

6 The repetition of some of the SAC's subheadings and allegations below is
 7 done solely for organizational purposes and is not an admission as to their truth.

8 **THE NATURE OF THIS ACTION**

9 1. This is an action for fraud and deceptive and misleading practices
 10 brought against defendants arising from their production and sale of vinyl records
 11 that defendants marketed as "cut" directly from the original analog master tapes for
 12 the recordings as part of an all-analog mastering chain, but failed to disclose
 13 included a digital step in the mastering process. Indeed, for years defendants
 14 concealed from consumers that their vinyl records at issue here were in fact cut
 15 from digital recordings that defendants made from analog tapes of the recordings.

16 **ANSWER:** Denied.

17 2. Central to the marketing of defendants' records was their claim that
 18 they cut their records from the original analog master tapes to induce consumers to
 19 pay premium prices for the records because the audiophile consumers who purchase
 20 such records reasonably believed the records were all-analog - - also known in the
 21 audiophile community as "AAA records or AAA transfers." Such AAA re-issues of
 22 popular jazz, rock and other genres of music have commanded premium prices for
 23 vinyl recordings during the renaissance period for vinyl records, which began in the
 24 early 1990s, when companies such as Classic Records began making vinyl reissues
 25 of original popular recordings cut directly from the analog master tapes for such
 26 recordings.

27 **ANSWER:** Denied.

1 3. Defendant Mobile Fidelity Sound Lab, Inc. ("MoFi"), originally
2 founded in California and based in Sebastopol, California, jumped on the vinyl
3 renaissance bandwagon by making and selling reissues that it branded "Original
4 Master Recording" ("OMR") to lead consumers to believe their vinyl records
5 bearing this mark were cut directly from the original analog master tapes for such
6 recordings. Beginning in or around 2016, MoFi also started selling a super-
7 premium version of their OMRs known as an "Ultradisc One-Step Pressing" or
8 "UD1S," which defendants falsely represented were cut directly from the original
9 analog master tapes of the recordings as part of an all-analog mastering chain.

10 **ANSWER:** Defendant admits that it was originally founded in California
11 and that it produces and sells various types of vinyl records, including those in its
12 "Original Master Recording" and "Ultradisc One Step" series. Defendant denies
13 the remaining allegations in Paragraph 3.

14 4. MoFi repeatedly represented to consumers in marketing and
15 advertising material on their website, covers and inserts for their records and in a
16 2017 video interview of their sound engineers in California that their records were
17 produced with an "all analog mastering chain," without disclosing they were
18 actually cutting their OMRs and UD1Ss from digital files. Plaintiff is informed and
19 believes and thereon alleges that MoFi has been cutting the lacquers used to press
20 most, if not all, of their records from direct stream digital (DSD) files since in or
21 around 2011.

22 **ANSWER:** Denied.

23 5. Plaintiff is informed and believes and thereon alleges that MoFi and
24 Defendant Audiophile Music Direct, Inc. ("Music Direct") are both owned and
25 controlled by James R. Davis ("Jim Davis" or "Davis"). Music Direct is one of
26 several distributors and retailers of MoFi records.

1 **ANSWER:** Defendant admits the allegations in Paragraph 5 with respect to
 2 MoFi. Defendant neither admits nor denies the allegations in Paragraph 5 directed
 3 to Music Direct.

4 6. MoFi and Music Direct concealed the digital step in the mastering
 5 chain for their MoFi records so that they could charge premium pricing for their
 6 records as if they were all-analog or AAA transfers. For example, defendants' OMR
 7 titles have been sold by defendants in the range of approximately \$30 to \$75 per
 8 title and UDISs releases have been sold by defendants for approximately \$100 to
 9 \$125 per title.

10 **ANSWER:** Defendant admits that it produces and sells various types of
 11 vinyl records, including those in its “Original Master Recording” and “Ultradisc
 12 One Step” series. Defendant denies the remaining allegations in Paragraph 6.

13 7. All analog vinyl reissues have been the most sought-after records for
 14 years. Companies that make vinyl reissues know lacquers mastered directly from
 15 the original analog master tapes have greater intrinsic value to consumers than
 16 records cut from a digital file.

17 **ANSWER:** Denied. Defendant further states as follows: all vinyl records are
 18 by definition “analog” but the value of any particular record (whether produced
 19 from analog or digital original master recordings, or whether there is or is not a
 20 digital process used in the initial recording, editing, mixing, remixing, mastering, or
 21 remastering) depends on many variables, including, without limitation, a record’s
 22 content and scarcity. Vinyl records produced with MoFi’s proprietary mastering
 23 and production processes, whether they include the use of DSD, or not, are
 24 recognized in the industry and trade as superior sounding and collectible records.

25 8. The desire for high-quality reissues of popular vinyl recordings
 26 produced during the height of the vinyl age of music during the 1950s to the 1970s
 27 stems from the fact that it is difficult and often very costly for audiophile
 28 consumers and record collectors to locate and purchase an original pressing of an

1 album in a mint or near mint condition at less than an exorbitant price. All of these
2 original pressings were cut from analog master tapes because digital recording
3 technology for music production did not exist or become commonplace until the
4 1980s. Therefore, an all-analog reissue allows a consumer the promise of obtaining
5 the closest thing to an original pressing of a title, which in some cases may even
6 sound better than the original pressing due to advances in vinyl record formulations
7 used today that lower the noise floor of the record.

8 **ANSWER:** Denied.

9 9. The desire for all-analog reissues also stems from the fact that a record
10 pressed from a lacquer cut directly from the original master tape of a recording puts
11 the listener closer to hearing the original master tape, which is the ultimate goal of
12 producing any vinyl record; i.e., to put the listener as close as possible to the
13 performer.

14 **ANSWER:** Denied.

15 10. By contrast, records cut from digital or those that have a digital step in
16 the mastering chain are inherently less valuable to consumers than all-analog
17 records. Defendants know this, which is why they represented for years that their
18 records were cut directly from the original master tapes and why they concealed the
19 digital step in their mastering chain from consumers.

20 **ANSWER:** Denied. Defendant further answers that it has found DSD to be
21 neutral and transparent audibly, and when it is chosen to be used in Defendant's
22 proprietary mastering process in combination with Defendant's proprietary state-of-
23 the-art equipment, it does not diminish, but rather enhances the quality of sound of
24 records produced therefrom. Defendant's proprietary process enables its highly-
25 skilled, expert mastering engineers to extract more information from the original
26 master recordings, which information is then sent back to the analog domain to be
27 edited in analog and cut onto laquers on Defendant's analog lathe to create its
28

1 superior sounding, highly regarded, and collectible analog vinyl records. See
2 additionally Defendants Answer to Paragraph No. 7.

3 11. Had defendants disclosed that the lacquers used to press their
4 premium- priced records were cut directly from digital files, and not original analog
5 master tapes, plaintiff and the putative class members would not have purchased the
6 records or would have paid substantially less for the records than they did.
7 Defendants' failure to disclose this fact caused damage and injury to plaintiff and
8 the class members.

9 **ANSWER:** Denied.

10 12. Plaintiff brings this action individually and on behalf of all other
11 similarly situated purchasers to recover damages and restitution for: (1) fraud; (2)
12 violations of California's Unfair Competition Law, Cal. Bus. & Profess. Code §
13 17200, et. seq.; and violations of California's Consumer Legal Remedies Act, Cal.
14 Civ. Code § 1750, et. seq.

15 **ANSWER:** Defendant admits that Plaintiff purports to bring this action as a
16 class action, but denies the basis for such an action, denies this action meets class
17 certification requirements, denies that Plaintiff is entitled to any relief, and denies
18 the remaining allegations in this paragraph, except as otherwise admitted.

19 **THE PARTIES**

20 13. Plaintiff Mark Allen ("Allen") is an individual residing in Orange
21 County, California.

22 **ANSWER:** Defendant lacks information or knowledge sufficient to form a
23 belief as to the truth or falsity of the allegations in Paragraph 13, and thus denies the
24 same.

25 14. Plaintiff is informed and believes and thereon alleges that defendant
26 MoFi, originally founded in California, is an Illinois corporation whose business
27 operations are conducted in Sebastopol, California, where MoFi's record production
28 facility and work force have been located for years. MoFi is a manufacturer,

1 wholesale distributor and retailer of vinyl records and Super Audio CDs (SACDs).
 2 According to MoFi's Notice of Removal [Dkt. #1 at 5], its principal place of
 3 business, where "its officers direct, control, and coordinate" its activities, is in
 4 Chicago, Illinois.

5 **ANSWER:** Defendant admits it is an Illinois corporation, originally founded
 6 in California, and that its principal place of business is in Chicago, Illinois where its
 7 officers direct, control, and coordinate its activities, which include, without
 8 limitation, the manufacturing and wholesale and retail sale of vinyl records and
 9 Super Audio CDs. Defendant denies the remaining allegations in Paragraph 14.

10 15. At all times relevant hereto, MoFi's global website <https://mofi.com/>
 11 contained the following choice of law and choice of forum provision in its Terms
 12 and Conditions for any dispute arising out of relating to the purchase of any MoFi
 13 record product: "Your use of this site shall be governed in all respects by the laws
 14 of the state of California, U.S.A., without regard to choice of law provisions, and
 15 not by the 1980 U.N. Convention on contracts for the international sale of goods.
 16 You agree that jurisdiction over and venue in any legal proceeding directly or
 17 indirectly arising out of or relating to this site (including but not limited to the
 18 purchase of Mobile Fidelity Sound Lab, Inc. products) shall be in the state or
 19 federal courts located in Los Angeles County, California."

20 **ANSWER:** Defendant admits that MoFi's website contains terms and
 21 conditions which includes the specific language quoted in Paragraph 15.
 22 Defendant denies the remaining allegations in Paragraph 15.

23 16. Defendant Music Direct is a Nevada corporation having its principal
 24 place of business in Chicago, Illinois. Plaintiff is informed and believes and thereon
 25 alleges that the CEO, CFO and President of Music Direct is Jim Davis. Plaintiff is
 26 informed and believes and thereon alleges that Jim Davis is also the CEO, CFO and
 27 President of MoFi. Plaintiff is further informed and believes and thereon alleges
 28 that Jim Davis and Music Direct control the business operations and policies of

1 MoFi. Music Direct is also one of the principal distributors and retailers of MoFi's
2 records, including its OMR and UD1S lines of records.

3 **ANSWER:** Defendant admits that Jim Davis is the President of MoFi and
4 that Music Direct is a principal distributor and retailer of MoFi's records, including
5 its OMR and UD1S lines of records. Defendant neither admits nor denies the
6 allegations in Paragraph 16 directed to Music Direct. Defendant denies the
7 remaining allegations in Paragraph 16.

8 17. Plaintiff is informed and believes and thereon alleges that Music
9 Direct engages in substantial business in the state of California and derives
10 substantial revenue from sales of MoFi records and other records in California. In
11 fact, Music Direct and Davis derive so much revenue from doing business in
12 California that they and MoFi are funding the construction of a state-of-the-art
13 record-pressing facility in Oxnard, California that will be the new business
14 headquarters of MoFi commencing in early 2023.

15 **ANSWER:** Defendant neither admits nor denies the allegations in Paragraph
16 17 directed to Music Direct. Defendant denies the remaining allegations in
17 Paragraph 17.

18 18. Plaintiff is unaware of the true identities of those Defendants sued
19 herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by
20 these fictitious names. Each of the fictitiously named Defendants is responsible in
21 some manner for the injuries and damages alleged by Plaintiff. Plaintiff will seek
22 leave of Court to amend this Complaint to show the true names and capacities of
23 the fictitiously named Defendants if and when they are ascertained.

24 **ANSWER:** Denied.

25 19. Each of the Defendants, including the DOE defendants, are the agents,
26 servants, employees, partners, joint venturers, alter egos, aiders and abettors, and/or
27 conspirators of one or more of the remaining Defendants, and, in doing the acts
28 alleged herein, were acting within the course and scope of said agency,

1 employment, partnership, joint venture, and/or conspiracy, or otherwise aided and
 2 abetted the others in committing the wrongs alleged here.

3 **ANSWER:** Denied.

4 **JURISDICTION AND VENUE**

5 20. Only the citizenship of the named parties in a class action (the
 6 representative plaintiff and defendants) is considered for diversity purposes.
 7 Accordingly, the Court has subject matter jurisdiction pursuant to 28 U.S.C. section
 8 1332(a) because the matter in controversy exceeds the sum or value of \$75,000,
 9 exclusive of interest and costs, and is between citizens of different states. The Court
 10 also has subject matter jurisdiction under Class Action Fairness Act, 28 USC §
 11 1332(d)(2), because this is a class action on behalf of over 100 members seeking in
 12 excess of \$5 million in the aggregate.

13 **ANSWER:** Defendant admits that the amount in controversy in this case is
 14 sufficient to meet this Court's jurisdictional threshold and that Plaintiff is diverse
 15 from Defendant. Denied as to the remaining allegations in Paragraph 20.

16 21. Venue is proper in this District pursuant to 28 U.S.C. sections 1390(c)
 17 and 1441(a) because the U.S. District Court for the Central District of California is
 18 the federal judicial district embracing the Los Angeles Superior Court, where
 19 plaintiff originally filed this action.

20 **ANSWER:** Denied.

21 **FACTUAL BACKGROUND**

22 **The All-Analog Production Process of Vinyl Records**

23 22. Before the advent of the digital age in the early 1980s, music was
 24 consumed in analog media, including vinyl records which were produced via an all-
 25 analog mastering process. A sound recording of a performance of a song or
 26 compilation of songs was recorded first on analog tape by transferring the sound
 27 from the artist's microphone into an analog sound console or mixing board that
 28

1 creates a "mixed down" original master tape recording of the music. The original
 2 master tape would then be played on a machine known as a "lathe" to cut grooves
 3 on a fragile lacquer disc. An example of the all-analog process of cutting a lacquer
 4 from original analog master tapes on a lathe for the current Blue Note Tone Poet
 5 jazz series (a competitor of MoFi who makes AAA vinyl reissues) can be seen in
 6 this video: <https://www.youtube.com/shorts/9LZYP4ovs7c>. The fragile lacquer is
 7 then electroplated as part of the plating process to create a metal "stamper" that is
 8 used to press the finished vinyl record. An example of this process by Analogue
 9 Productions (another competitor of MoFi making and selling AAA reissues) is
 10 shown in the following video: <https://www.youtube.com/watch?v=33ZLaR4IbAY>.
 11 After the lacquer goes through the plating process, it can no longer be used to create
 12 additional stampers. Therefore, the nature of an all-analog mastering process
 13 requires access again to the analog master tape or a "safety" copy of the master to
 14 create another lacquer to plate and press additional records.

15 **ANSWER:** Defendant lacks sufficient knowledge to admit or deny the
 16 allegations in Paragraph 22 and therefore denies the same.

17 23. Accordingly, due to the inherent nature of an all-analog mastering
 18 chain for making vinyl records, reissues of such albums can only be produced in
 19 limited quantities, which are typically numbered by the record manufacturers. This
 20 limited availability further increases the demand for such AAA records.

21 **ANSWER:** Denied.

22 24. With the invention of digital sound formats, sound recordings became
 23 more affordable and ubiquitous. Vinyl records can also now be created or cut more
 24 cheaply from digital files than analog tapes. Therefore, with digital technology, a
 25 reissue label need only obtain a digital copy of an analog master tape or have access
 26 to the original master tape on a single occasion to make a digital recording of the
 27 tape, which could then be used multiple times to create lacquers that can be plated
 28 and used to create an unlimited number of stampers and records. For a variety of

1 reasons, reissue vinyl records with such a digital step in the mastering chain are
 2 nowhere near as desirable to audiophile consumers and record collectors as all-
 3 analog records.

4 **ANSWER:** Denied.

5 25. All-analog reissues are far more desirable to audiophile consumers and
 6 record collectors than their digitally cut counterparts for several reasons. First, all-
 7 analog or AAA records generally have a distinctive, analog warm sound and
 8 ambience, which is different from the sound and ambience of records sourced from
 9 - even high quality - digital files. Second, audiophile consumers with turntables
 10 desire all-analog reissues because they are looking to replicate an original pressing
 11 of the record that is no longer available in a mint (sealed) or near-mint (like new)
 12 condition at less than an exorbitant price. By way of an example, an original, first
 13 pressing of the landmark jazz album, "*Kind of Blue*" by Miles Davis in a mint or
 14 near mint condition would likely sell for hundreds if not thousands of dollars if you
 15 could even find one. On the other hand, you could currently purchase a new, limited
 16 edition, all-analog reissue of *Kind of Blue* produced by Analogue Productions for
 17 \$150. [https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-](https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-UHQR_Vinyl_Record)
 18 [UHQR_Vinyl_Record](https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-UHQR_Vinyl_Record). But, a new *Kind of Blue* vinyl record that was not
 19 represented to have been made with an all-analog process can be purchased for
 20 \$18.99. <https://iocorecords.com/products/miles-davis-kind-of-blue-blue-vinyl>.
 21 Third, the ultimate goal of any vinyl record is to get you as close as possible to the
 22 original master tape of the musician performing live. That experience cannot be
 23 adequately replaced with some fungible digital recording of the tape. High
 24 resolution digital recordings of classic rock, jazz and other popular genres of music
 25 can be streamed for a small monthly subscription fee through streaming services
 26 such as Tidal or Qobuz, or purchased as a DSD or other digital downloadable file
 27 for a fraction of the premium prices charged by MoFi for its purported AAA
 28 records.

1 **ANSWER:** Denied.

2 26. Simply put, all-analog or AAA vinyl reissue records are in high
3 demand by audiophiles and record collectors today. They are produced in limited
4 quantities and popular titles typically sell out, creating a secondary market where
5 they often sell for a multiple of the original purchase price, just like the original
6 pressings that they replicate.

7 **ANSWER:** Defendant admits that many of its reissue “Original Master
8 Recording” and “Ultradisc One Step” series records, whether or not they include
9 the use of what Defendant has determined is a neutral and audibly-transparent DSD
10 capture step, are in high demand by audiophiles and record collectors, are produced
11 in limited quantities, and popular titles often sell out. Defendant denies the
12 remaining allegations in Paragraph 26.

13 **MoFi's False and Misleading Advertising and Marketing of Its Vinyl Records**

14 27. MoFi was founded in California by Brad Miller in 1977. MoFi, based
15 in Sebastopol, California, is a record label specializing in the production of
16 audiophile reissues of classic rock, jazz and other popular genres of music. MoFi
17 produces reissued vinyl LP records and Super Audio CDs (SACDs). Plaintiff is
18 informed and believes and thereon alleges that at all times relevant hereto, MoFi's
19 records were mastered in Sebastopol, California and pressed, assembled and
20 packaged at Record Technology Incorporated (RTI) in Camarillo, California.
21 Accordingly, the materials containing the misrepresentations regarding the
22 mastering of MoFi's records emanated from California.

23 **ANSWER:** Defendant admits that it produces audiophile reissues of classic
24 rock, jazz and other popular genres of music, that it produces reissued vinyl LP
25 records and Super Audio CDs (SACDs), that at all times relevant hereto, its records
26 were mastered in Sebastopol, California and pressed, assembled and packaged at
27
28

1 Record Technology Incorporated (RTI) in Camarillo, California. Defendant denies
2 the remaining allegations in Paragraph 27.

3 28. Jim Davis of Music Direct purchased MoFi in or around 2001.
4 Plaintiff is informed and believes and thereon alleges that since Jim Davis
5 purchased MoFi, he and Music Direct have invested heavily in MoFi's operations in
6 California to create and expand MoFi's vinyl reissue business as it exists today.

7 **ANSWER:** Defendant admits that Jim Davis individually purchased MoFi
8 in or around 2001 and he has invested in its operations. Defendant neither admits
9 nor denies the allegations in Paragraph 28 directed to Music Direct. Defendant
10 denies the remaining allegations in Paragraph 28.

11 29. At all times relevant hereto, MoFi and Music Direct have advertised
12 and marketed their MoFi vinyl records as produced using an all-analog mastering
13 chain and until July 2022 never disclosed a digital step in the mastering process.
14 MoFi uses a claimed trademark of "Original Master Recording" on its vinyl
15 records, including its ultra-premium Ultradisc One-Step series of releases, to lead
16 audiophiles and record collector consumers who buy MoFi's records at premium
17 prices to believe its vinyl record reissues of albums bearing the OMR mark are cut
18 directly from the original analog master tapes for the albums. Indeed, for years,
19 prior to July of 2022, MoFi reassured consumers that if one of their albums had the
20 "Original Master Recording" banner on the cover, it meant the record was cut from
21 the verified analog master tapes.

22 **ANSWER:** Defendant neither admits nor denies the allegations in Paragraph
23 29 directed to Music Direct. Defendant denies the remaining allegations in
24 Paragraph 29.

25 30. MoFi has three distinct lines of records: (1) records labelled "Mobile
26 Fidelity Sound Labs" at top of the album (which MoFi represented were all-analog
27 and cut from analog tapes, but which MoFi could not verify that all songs on the
28 album were from the original master tapes); (2) records labelled "Original Master

1 Recording" at the top of the album (which MoFi represented were all-analog and
 2 cut from the original master tapes); and (3) the Ultradisc One-Step (UD1S) series
 3 that also has "Original Master Recording" banner at the top of each album (which
 4 MoFi also represented were all-analog and cut from the master tapes using MoFi's
 5 proprietary "One-Step" plating process).

6 **ANSWER:** Defendant admits that it produces and sells records labeled
 7 "Mobile Fidelity Sound Lab" and "Original Master Recording" at top of the
 8 albums. Defendant denies the remaining allegations in Paragraph 30.

9 31. For its OMR line of records, MoFi commonly represented on its
 10 website in all caps in the description for each release that it was "MASTERED
 11 FROM THE ORIGINAL MASTER TAPES" and strictly limited to a certain stated
 12 number of copies. In a more detailed description for each album at issue, MoFi
 13 provided the following or a substantially similar description: "Mastered from the
 14 original master tapes, pressed at RTI, and strictly limited to 4,000 numbered copies,
 15 Mobile Fidelity's 180g 45RPM vinyl 2LP set possesses seemingly limitless
 16 dynamics, reference-grade presence, expansive soundstages, and a wealth of
 17 previously obscured information." See, e.g.,
 18 [http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/pr](http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/products/grateful-dead-blues-for-allah-180g-45rpm-2lp)
 19 [oducts/grateful-dead-blues-for-allah-180g-45rpm-2lp](http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/products/grateful-dead-blues-for-allah-180g-45rpm-2lp).

20 **ANSWER:** Defendant admits that for certain records in its "Original Master
 21 Recording" series it represented on its website that such records were "mastered" or
 22 "sourced" from the original master recordings. Defendant denies the remaining
 23 allegation in Paragraph 31.

24 32. The phrase "Mastered from the original master tapes" has a specialized
 25 meaning in the audiophile and record collector community that means a record
 26 pressed from a lacquer cut directly from the original analog master tapes of a
 27 recording.
 28

1 **ANSWER:** Denied. Defendant further answers that it is well-known and
 2 understood in the music industry and audiophile and record collector communities
 3 that original master tapes can be either analog or digital.

4 33. The backside of the cover for each album in the OMR line of records
 5 also states: "Mastered from the Original Master Tapes." The backside of the cover
 6 for the "Mobile Fidelity Sound Lab" series of records typically states: "Mastered by
 7 Krieg Wunderlich at Mobile Fidelity Sound Lab Sebastopol, CA on the GAIN 2
 8 ULTRA ANALOG SYSTEM" or a substantially similar statement.

9 **ANSWER:** Defendant admits that certain of its records in its "Original
 10 Master Recording" series state: "Mastered from the Original Master Tapes" on their
 11 backside cover, and certain of its records in its "Mobile Fidelity Sound Lab"
 12 series state: "Mastered by Krieg Wunderlich at Mobile Fidelity Sound Lab
 13 Sebastopol, CA on the GAIN 2 ULTRA ANALOG SYSTEM" on their backside
 14 cover, but denies the remaining allegations in Paragraph 33.

15 34. MoFi also included marketing and promotional material as an insert to
 16 its OMR line of records, which further described the GAIN 2 Ultra Analog System
 17 and its mastering process for cutting its records. The insert went around each record
 18 inside the album cover and contains pictures of other MoFi premium albums,
 19 including its ultrapremium UD1S series. At all times relevant hereto, the insert
 20 stated as follows: "Audiophiles and serious music collectors the world over have
 21 enormous respect for our contributions to the analog disc. The GAIN 2 Ultra
 22 Analog System is our latest innovation. It is proprietary cutting system . . . The
 23 GAIN 2 Ultra Analog System is comprised of a highly modified Studer A-80 tape
 24 machine with proprietary electronics and a highly sophisticated cutting system with
 25 custom amplification to drive an Ortofon cutter head on a beautifully restored
 26 Neumann Lathe. . . Our Original Master Recordings only utilize actual original
 27 masters as source material. The master is played back through our custom
 28 electronics to extract the maximum amount of information. Due to the specialized

1 plating process employed, occasional pops or ticks may be present in initial
 2 playback. But as the disc is played, a high-quality stylus will actually polish the
 3 groove walls and improve the sound. To ensure optimum sound quality, we limit
 4 the number of pressings for each release."

5 **ANSWER:** Defendant admits that such language was included on certain of
 6 its record inserts, but denies the remaining allegations in Paragraph 34.

7 35. At all times relevant hereto, the description on MoFi's website for each
 8 ultra-premium UD1S release, which was repeated on the websites of Music Direct
 9 and other online retailers of MoFi's records, also typically stated in all caps:



15 "MASTERED FROM THE ORIGINAL MASTER TAPES." See, e.g.,
 16 [http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-](http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-one-step/products/mfsl45udls-001_santana_abraxas_180g_45rpm_21p_box_set)
 17 [one-step/products/mfsl45udls-001_santana_abraxas_180g_45rpm_21p_box_set.](http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-one-step/products/mfsl45udls-001_santana_abraxas_180g_45rpm_21p_box_set)

18 **ANSWER:** Defendant admits that such language was included on its
 19 website for certain of its UD1S releases. Defendant neither admits nor denies the
 20 allegations in Paragraph 35 directed to Music Direct and/or other online retailers of
 21 its records. Defendant denies the remaining allegations in Paragraph 35.

22 36. The ultra-premium priced UD1S releases also came with an insert in
 23 the box for the album that represented in words and pictures that each release was
 24 an all-analog record cut from the original analog master tapes.

25 **ANSWER:** Defendant admits that an insert containing the words and images
 26 in the insert excerpt depicted in Paragraph 36 was included with certain UD1S
 27 records, but those words and images speak for themselves and Defendant therefore
 28

1 denies Plaintiff's interpretation and characterization of the inserts. Defendant
2 denies the remaining allegations in Paragraph 36.

3 37. In particular, the insert included with each UD1S stated as follows:
4 "Instead of utilizing the industry-standard three-step lacquer process, Mobile
5 Fidelity Sound Labs' new ULTRADISC ONE-STEP (UD1S) uses only one step,
6 bypassing two processes of generational loss. . . . **MFSL engineers begin with the**
7 **original master tapes and meticulously cut a set of lacquers.** These lacquers are
8 used to create a very fragile, pristine UD1S stamper called a 'convert.' Delicate
9 'converts' are then formed into the actual record stampers, producing a final product
10 that literally and figuratively brings you closer to the music. . . . **The exclusive**
11 **nature of these very limited pressings guarantees that every UD1S pressing**
12 **serves as an immaculate replica of the lacquer sourced directly from the**
13 **original master tapes.** Every conceivable aspect of vinyl production is optimized
14 to produce the most perfect record album available today." emphasis added). The
15 insert included with each UD1S release also contains a diagram set forth below
16 clearly depicting an all-analog mastering chain:

17 **ANSWER:** Defendant admits that an insert containing the words quoted in
18 Paragraph 37 was included with certain UD1S records, but those words speak for
19 themselves and Defendant therefore denies Plaintiff's interpretation and
20 characterization of the inserts. Defendant further answers that the "Ultradisc One-
21 Step Process" referenced in the insert discusses the one-step plating and pressing
22 process and has nothing to do with either analog or digital use in the mastering
23 process or the analog lathe lacquer cutting process. Defendant denies the remaining
24 allegations in Paragraph 37.

25 38. At all times relevant hereto, the all-analog mastering chain diagram in
26 the insert accompanying each UD1S title was prominently displayed on MoFi's
27 website. See, e.g., <http://web.archive.org/web/20210728105623/https://mofi.com/collections/ultradisc-one-step>.
28

1 **ANSWER:** Denied.

2 39. Plaintiff is informed and believes and thereon alleges that at all times
3 relevant hereto, the above representations or substantially similar representations
4 that MoFi's records were all-analog records cut from original master tapes were also
5 set forth on MoFi's website and in the individual album descriptions on the websites
6 of other online retailers of MoFi records, including Music Direct. See, e.g.,
7 [http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#](http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#GAIN2_Analog)
8 [GAIN2_Analog](http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#GAIN2_Analog).

9 **ANSWER:** Denied.

10 40. In purchasing MoFi releases at premium prices, plaintiff and other
11 audiophile consumers of MoFi's records that comprise the putative class reasonably
12 relied upon and understood the above statements, and the diagrams in the insert to
13 the UD1S releases, which failed to disclose that the mastering process was not all-
14 analog and were instead cut from digital files, to be representations that each record
15 they purchased was an all-analog record cut from the original analog master tapes.

16 **ANSWER:** Denied.

17 41. MoFi's false and misleading advertising and marketing of its records
18 was not limited to false and misleading representations on packaging for its records
19 and descriptions on MoFi's website and the websites of its authorized retailers.

20 **ANSWER:** Denied.

21 42. MoFi also consistently represented in interviews that its mastering
22 process of making its records was all-analog. For example, in an article published
23 by CNET.com on April 29, 2010, MoFi's engineer Rob LoVerde was quoted as
24 saying that "every MoFi LP-'which was originally recorded to analog-is cut from an
25 analog master tape," unlike most LPs that "now are cut from digital masters." See
26 Steve Guttenberg, MoFi Remasters, Perfects LP Sound, CNET, Apr. 29, 2010,
27 <https://www.cnet.com/tech/home-entertainment/mofi-remasters-perfects-lp-sound/>.

1 **ANSWER:** Denied. Defendant further answers that the alleged quotes are
 2 inaccurate, taken out of context, and intentionally mislead and convey a false
 3 impression as to Defendant's actual and complete statements.

4 43. On January 8, 2017, to promote MoFi's new Ultradisc One-Step line of
 5 pressings, MoFi's sound engineers, Rob LoVerde and Shawn R. Britton, provided
 6 an interview recorded on YouTube regarding MoFi's mastering process for its vinyl
 7 records in California. In discussing the GAIN 2 ULTRA ANALOG SYSTEM used
 8 to cut MoFi's vinyl records, Britton stated as follows at 1:32 of the video: "**Well,**
 9 **some people ask us questions like, is it an all analog mastering chain? It is."**
 10 <https://www.youtube.com/watch?v=z-td3Uk5TIQ>.

11 **ANSWER:** Defendant admits that Defendant's engineers gave the interview
 12 referenced in Paragraph 43, but denies the remaining allegations therein. Defendant
 13 further answers that the alleged quotes are inaccurate, taken out of context, and
 14 intentionally mislead and convey a false impression as to Defendant's statements.

15 44. At the time of the January 8, 2017 interview, LoVerde and Britton and
 16 defendants knew that MoFi's first UD1S release, Santana Abraxas, released in 2016
 17 and shown behind LoVerde and Britton in the video, had been cut from a DSD file.
 18 <https://www.youtube.com/watch?v=H3Llx02KK-w&t=5s>. They and defendants
 19 also knew that most, if not all, of MoFi's records, including those labeled "Original
 20 Master Recording," had been cut from digital since 2012.

21 **ANSWER:** Defendant admits that it and its engineers knew that its UD1S
 22 release, Santana Abraxas, contained a DSD capture step in its mastering chain, as
 23 did other of its releases since 2012, but denies the remaining allegations in
 24 Paragraph 44.

25 **Defendants' Fraud is Uncovered**

26 45. On July 14, 2022, Mike Esposito, a record store owner with a popular
 27 YouTube channel subscribed to by vinyl record audiophiles, released a video on his
 28

1 channel "The 'In' Groove" stating that "pretty reliable sources" informed him that,
 2 contrary to the company's official statements and marketing and promotion of its
 3 records, "pretty much everything" that MoFi had been producing for vinyl records
 4 since 2015 involved cutting its lacquers from digital files and not analog master
 5 tape. Shortly thereafter, MoFi invited Esposito to California for a tour of its facility
 6 in Sebastopol. While there, MoFi staff allowed Esposito to record a video of his
 7 interview of MoFi's long-time principal sound engineers, Britton, LoVerde and
 8 Krieg Wunderlich that Esposito released on his YouTube channel on July 20, 2022
 9 (the "July 20 Video") <https://www.youtube.com/watch?v=shg0780YgAE&t=1359s>.

10 **ANSWER:** Defendant admits that certain of its engineers invited Mike
 11 Esposito to California for a tour of its facility in Sebastopol, and while there,
 12 allowed Esposito to record a video of his interview of Defendant's engineers
 13 referenced in Paragraph 45, but Defendant lacks information or knowledge
 14 sufficient to form a belief as to the truth or falsity of the remaining allegations in
 15 Paragraph 45 and thus denies the same.

16 46. During the July 20 Video, Britton shockingly admitted that they had
 17 been cutting MoFi records from DSD files since 2011, which included MoFi's
 18 UD1S release of Santana *Abraxas*, OMR release of *Abraxas* (which like other
 19 OMR releases states on the back cover, "Mastered from the Original Stereo Master
 20 Tapes") and the Miles Davis catalogue released by MoFi. Britton and the other
 21 engineers also indicated that all of MoFi's UD1S releases included this digital step,
 22 as well as many other releases, which MoFi had previously represented were all-
 23 analog records cut from the original master tapes.

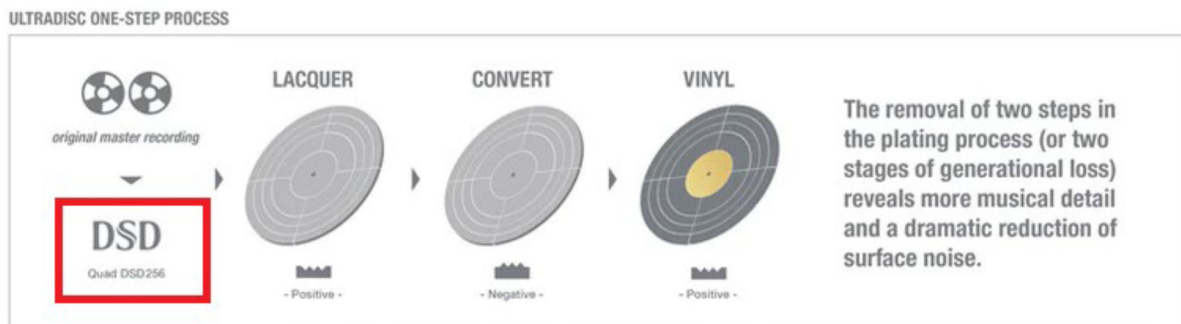
24 **ANSWER:** Denied.

25 47. MoFi's admission that it had been cutting its records from digital
 26 caused consumer outrage. MoFi and Music Direct went into a damage-control
 27 mode and began quickly changing the wording on their websites and marketing
 28 materials to disclose for the first time the digital step in the mastering chain for their

records. For example, MoFi changed the description of the long-since sold-out UD1S release of Santana *Abraxas* to includes the following description: "1/4" / 15 IPS analog master to DSD 256 to analog console to lathe."

ANSWER: Defendant admits that it provided the mastering source provenance information: "1/4" / 15 IPS analog master to DSD 256 to analog console to lathe" for its UD1S Santana *Abraxas* release on its website, but denies the remaining allegations in Paragraph 47.

48. MoFi also changed the diagram in the insert for its new UD1S releases to disclose the digital step in the mastering chain and the cutting of the lacquer for each record from a DSD file:



ANSWER: Defendant admits that the diagram in the inserts has evolved over time. Defendant denies the remaining allegations in Paragraph 48.

ANSWER:

49. On or about July 27, 2022, MoFi and Music Direct also issued a public statement, signed by Jim Davis, posted on their social media platforms in which they acknowledged that they had misled consumers regarding the mastering chain for their records:

We at Mobile Fidelity Sound Lab are aware of customer complaints regarding use of digital technology in our mastering chain. We apologize for using vague language, allowing false narratives to propagate, and for taking for granted the goodwill and trust our customers place in the Mobile Fidelity Sound Lab brand.

We recognize our conduct has resulted in both anger and confusion in the marketplace. Moving forward, we are adopting a policy of 100% transparency regarding the provenance of our audio products. We are immediately working on updating our websites, future printed materials, and packaging – as well as providing our sales and customer service representatives with these details. We will also provide clear, specific definitions when it comes to Mobile Fidelity Sound Lab marketing branding such as Original Master Recording (OMR) and UltraDisc One- Step (UD1S). We will backfill source information on previous releases so Mobile Fidelity Sound Lab customers can feel as confident in owning their products as we are in making them.

* * *

Jim Davis

President, Mobile Fidelity Sound Lab

ANSWER: Defendant admits that Jim Davis issued a public statement that was posted online and on social media platforms and that it is accurately quoted in Paragraph 49, but his words speak for themselves and Defendant therefore denies Plaintiff's interpretation and characterization of those words.

ANSWER: Denied.

50. MoFi and Music Direct charged plaintiff and other class members a premium for their OMR and UD1S releases based on misrepresentations that these releases were all-analog and the concealment of the digital step in the mastering chain for the records. Had MoFi and Music Direct disclosed that the records were cut from digital, plaintiff and other class members would not have purchased the records or would have paid substantially less for them.

ANSWER: Denied.

Plaintiffs Purchases of Mo-Fi Records Advertised as All-Analog

51. Plaintiff is an audiophile and consumer of vinyl records.

ANSWER: Defendant lacks information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 51, and thus denies the same.

52. Plaintiff saw and relied upon defendants' above-described representations on their websites, printed materials and packaging and inserts for their vinyl records regarding an all-analog mastering chain for defendants' OMR line of their records, including their ultra-premium UD1S series.

ANSWER: Denied.

53. In reliance on these representations, and based on defendants' concealment of the digital step in the mastering chain for their records, plaintiff purchased multiple new, purportedly OMR all-analog vinyl records produced by MoFi, including, but not limited to, the following UD1S releases: Yes *Fragile* (one copy purchased from Alma Audio in San Diego in 2019, and a second copy purchased online from Music Direct on or about February 20, 2020); and Bob Dylan *Blood On the Tracks*, Marvin Gaye *What's Going On*, Thelonious Monk *Monk's Dream*, and Charles Mingus *Mingus Ah Um* (purchased online from Elusive Disc on or about July 7, 2020).

ANSWER: Denied.

54. Had MoFi and Music Direct disclosed that these records were cut from digital files, plaintiff would not have purchased these records or would have paid substantially less for them.

ANSWER: Denied.

CLASS ACTION ALLEGATIONS

55. **Class Definition.** Plaintiff brings this action on behalf of himself and a class of similarly-situated persons defined as: All persons nationwide who, before July 20, 2022, purchased a MoFi Original Master Recording (OMR) record or UltraDisc One- Step (UD1S) record (collectively, the "Records"), hereinafter the

1 "Class". The Class excludes persons who purchased used Records. The Class also
 2 excludes defendants and their directors, officers, employees, agents,
 3 representatives, immediate family members, joint venturers, and all persons and
 4 entities controlled by defendants or affiliated with defendants.

5 **ANSWER:** Denied. Defendant further denies that class certification is
 6 appropriate in this action.

7 56. **Numerosity.** The number of persons within the Class is substantial,
 8 numbering thousands and thousands of persons. Individual joinder of all members
 9 of the Class would be impracticable. The size and relative modest value of the
 10 claims as to each individual Class member also renders joinder impractical.
 11 Utilization of a class action is the most economically feasible means of adjudicating
 12 this matter.

13 **ANSWER:** Denied. Defendant further denies that class certification is
 14 appropriate in this action.

15 57. **Commonality and Predominance.** There are well defined common
 16 questions of law and fact that exist as to all members of the Class. These questions
 17 predominate over the questions affecting only individual Class members. These
 18 common legal and factual questions include, among others:

- 19 a. Whether defendants' labeling, marketing and promotion of their
 20 Records was false, misleading and failed to disclose that the
 21 Records were not all-analog and were instead cut from digital
 22 files;
- 23 b. Whether defendants' conduct was unfair and/or deceptive and
 24 amounted to fraud;
- 25 c. Whether plaintiff and the Class members have sustained
 26 damages as a result of defendants' fraudulent and misleading
 27 conduct; and
- 28 d. The proper measure of their damages.

1 **ANSWER:** Denied. Defendant further denies that class certification is
 2 appropriate in this action.

3 58. **Typicality.** Plaintiff's claims are typical of the claims of the Class.
 4 Plaintiff and the other members of the Class were exposed to defendants' false and
 5 misleading marketing, promotion and representations about the mastering of the
 6 Records and concealment of the digital step in the mastering process; purchased
 7 one or more Records in reliance upon the same or substantially the same all-analog
 8 misrepresentations or omissions; and suffered loss or damage as a result of that
 9 purchase.

10 **ANSWER:** Denied. Defendant further denies that class certification is
 11 appropriate in this action.

12 59. **Adequacy of Representation.** Plaintiff is an adequate Class
 13 representative because his interests do not conflict with the interests of the other
 14 Class members he seeks to represent. He has retained counsel competent and
 15 experienced in conducting consumer fraud class actions. Plaintiff and his counsel
 16 will adequately protect the interests of the Class.

17 **ANSWER:** Denied. Defendant further denies that class certification is
 18 appropriate in this action.

19 60. **Superiority.** A class action is superior to other available methods for
 20 the fair and efficient adjudication of the controversy and will create a substantial
 21 benefit to both the public and the courts in that: the per class-member costs of
 22 prosecuting the action individually will vastly exceed the costs for prosecuting the
 23 case as a class action; class certification will obviate the necessity of a multiplicity
 24 of claims; it is desirable to concentrate the litigation of these claims in this forum;
 25 and unification of common questions of fact and law into a single proceeding
 26 before this Court will reduce the likelihood of inconsistent rulings, opinions, and
 27 decisions. Moreover, members of the Class lack an adequate economic incentive to
 28 pay attorneys to prosecute their claims individually and individual claims are not

1 sufficiently sizable to attract the interest of highly able and dedicated attorneys to
 2 prosecute such claims on a contingency basis.

3 **ANSWER:** Denied. Defendant further denies that class certification is
 4 appropriate in this action.

5 61. A class action presents far fewer management difficulties than
 6 litigating this case as hundreds or thousands of individual actions and provides the
 7 benefits of single adjudication, economies of scale, and comprehensive supervision
 8 by a single court.

9 **ANSWER:** Denied. Defendant further denies that class certification is
 10 appropriate in this action.

11 62. The Class is ascertainable because it describes a set of common
 12 characteristics sufficient to allow members of that group to identify themselves as
 13 having a right to recover based on the descriptions.

14 **ANSWER:** Denied. Defendant further denies that class certification is
 15 appropriate in this action.

16 63. California Law Applies to the Entire Class. California has significant
 17 contacts and a significant aggregation of contacts to the claims asserted by each
 18 member of the Class, establishing California's interest in this matter such that the
 19 application of California law is not arbitrary or unfair. Plaintiff is informed and
 20 believes and thereon alleges such contacts include: (1) MoFi, founded and based in
 21 California, is a California business; (2) At all relevant times, the Records were
 22 manufactured in and originally shipped from California; (3) At all relevant times,
 23 the Record album covers and inserts containing the false representations and
 24 omissions were prepared in, printed in and shipped from California; (4) At all
 25 relevant times, advertising materials containing the false representations and
 26 omissions were prepared in, printed in and shipped from California; (5) After
 27 acquiring MoFi in California, Music Direct and its owner, Jim Davis, learned of the
 28 false representations and omissions about the Records emanating from California

1 and they allowed and encouraged the continuation of such unlawful conduct; and
 2 (6) The initial admission that the Records were not manufactured using an all-
 3 analog process was made in California.

4 **ANSWER:** Denied. Defendant further denies that class certification is
 5 appropriate in this action.

6 64. Indeed, in recognition of defendants' significant contacts with
 7 California, the terms and conditions for MoFi's global website includes a choice of
 8 California's internal laws and a choice of forum requiring litigation in Los Angeles,
 9 California.

10 **ANSWER:** Denied. Defendant further denies that class certification is
 11 appropriate in this action.

12 **FIRST CAUSE OF ACTION**

13 **(Fraud)**

14 65. Plaintiff realleges and incorporates by reference the allegations of
 15 paragraphs 1 through 64 of this complaint.

16 **ANSWER:** Defendant incorporates by reference its responses to each of the
 17 preceding paragraphs as though fully set forth herein.

18 66. Plaintiff brings this claim individually and on behalf of members of the
 19 proposed Class against defendants.

20 **ANSWER:** Defendant admits that Plaintiff purports to bring this case as a
 21 class action but denies that he is entitled to any of his requested relief.

22 67. As alleged above, defendants provided plaintiff and other members of
 23 the Class with false or misleading material information about the Records,
 24 including without limitation, representing the Records were "all-analog" without
 25 disclosing the digital step in the mastering process for the Records. Defendants
 26 concealed material information from plaintiff and other members of the Class,
 27 including without limitation, failing to disclose the digital step in the mastering
 28 chain for the Records and the fact that the Records were cut from digital files.

1 **ANSWER:** Denied.

2 68. Defendants knowingly and intentionally made numerous false and/or
3 misleading representations of material fact with the intent to deceive and/or induce
4 reliance by plaintiff and other members of the Class. Defendants also failed to
5 disclose and concealed material facts that they had a duty to disclose to prevent
6 other statements that they had made from being false and misleading, including,
7 without limitation, their failure to disclose the digital step in the mastering chain for
8 their Records. Plaintiff and other members of the Class reasonably relied on these
9 representations, omissions and concealments, which induced them to purchase the
10 Records.

11 **ANSWER:** Denied.

12 69. Defendants' fraudulent conduct caused damage to plaintiff and the
13 members of the Class in amounts according to proof at trial.

14 **ANSWER:** Denied.

15 70. Defendants' wrongful acts and omissions were knowingly, willfully,
16 intentionally, maliciously, oppressively and fraudulently undertaken with the
17 express purpose and intention of defrauding plaintiff and other members of the
18 Class, all to the substantial financial benefit of defendants, and each of them,
19 thereby entitling plaintiff and the Class to an award of punitive damages.

20 **ANSWER:** Denied.

21 71. Defendants are subject to direct liability for this cause of action
22 because they each performed actions constituting fraud. Defendants are also liable
23 for: (a) conspiring with one another to defraud plaintiff and the Class; (b) furnishing
24 the means for the accomplishment of the fraud described above (by producing and
25 selling the Records made with digital recording technology while knowing the
26 Records would be advertised as all-analog); (c) aiding and abetting the fraud of one
27 another; and (d) the fraud of one another under agency, alter ego and/or joint
28 venture principles.

1 **ANSWER:** Denied.

2 **SECOND CAUSE OF ACTION**

3 **(Unfair Competition under Bus. & Prof. Code § 17200, et seq.)**

4 72. Plaintiff realleges and incorporates by reference the allegations of
5 paragraphs 1 through 71 of this complaint.

6 **ANSWER:** Defendant incorporates by reference its responses to each of the
7 preceding paragraphs as though fully set forth herein.

8 73. Plaintiff brings this claim individually and on behalf of members of the
9 proposed Class against defendants.

10 **ANSWER:** Defendant admits that Plaintiff purports to bring this case as a
11 class action but denies that he is entitled to any of his requested relief.

12 74. California Business and Professions Code § 17200, et seq., (the
13 "Unfair Competition Law" or "UCL") prohibits unlawful, unfair and fraudulent
14 business practices.

15 **ANSWER:** Denied.

16 75. Defendants' actions violate the UCL's fraudulent prong because the
17 actions were likely to, and did, deceive plaintiff and the public.

18 **ANSWER:** Denied.

19 76. Defendants' actions violate the UCL's unlawful prong because the
20 actions constitute fraud.

21 **ANSWER:** Denied.

22 77. Defendants are subject to direct liability for this cause of action
23 because they each performed actions constituting violations of the UCL. Each
24 defendant is also liable for: (a) conspiring with one another to violate the UCL; (b)
25 furnishing the means for the accomplishment of the UCL violations described
26 above (by producing and selling the Records made with digital recording
27 technology while knowing the Records would be advertised as all-analog); (c)
28

aiding and abetting the UCL violations of one another; and (d) the UCL violations of one another under agency, alter ego, and/or joint venture principles.

ANSWER: Denied.

THIRD CAUSE OF ACTION

(Consumers Legal Remedies Act, Civ. Code § 1750, et seq.)

78. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 77 of this complaint.

ANSWER: Defendant incorporates by reference its responses to each of the preceding paragraphs as though fully set forth herein.

79. Plaintiff brings this claim individually and on behalf of member of the proposed Class against defendants.

ANSWER: Defendant admits that Plaintiff purports to bring this case as a class action but denies that he is entitled to any of his requested relief.

80. Plaintiff and the members of the proposed Class are "consumers" within the meaning of the Consumers Legal Remedies Act ("CLRA").

ANSWER: Denied.

81. Defendants are "persons" within the meaning of the CLRA.

ANSWER: Denied.

82. The CLRA makes it unlawful for any person in a transaction intended to result in the sale of goods to any consumer to represent "that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another" and to advertise goods "with intent not to sell them as advertised."

ANSWER: Denied.

83. The sale and advertising of the Records as alleged above are unlawful and violate the CLRA.

ANSWER: Denied.

1 84. Defendants' wrongful acts and omissions were knowingly, willfully,
 2 intentionally, maliciously, oppressively and fraudulently undertaken with the
 3 express purpose and intention of defrauding plaintiff and other members of the
 4 Class, all to the substantial financial benefit of defendants, and each of them,
 5 thereby entitling plaintiff and the Class to an award of punitive damages.

6 **ANSWER:** Denied.

7 85. Defendants are subject to direct liability for this cause of action
 8 because they each performed actions constituting fraud. Defendants are also liable
 9 for: (a) conspiring with one another to defraud plaintiff and the Class; (b) furnishing
 10 the means for the accomplishment of the fraud described above (by producing and
 11 selling the Records made with digital recording technology while knowing the
 12 Records would be advertised as all-analog); (c) aiding and abetting the fraud of one
 13 another; and (d) the fraud of one another under agency, alter ego and/or joint
 14 venture principles.

15 **ANSWER:** Denied.

16 86. More than thirty (30) days before the filing of this amended complaint
 17 adding this cause of action for violation of the CLRA, plaintiff notified defendants
 18 of the particular violations of Section 1770 alleged herein and demanded that they
 19 correct, repair, replace or otherwise rectify the goods or services alleged to be in
 20 violation of Section 1770. Defendants have failed to correct, replace or otherwise
 21 rectify their falsely advertised goods, thereby entitling plaintiff and the Class to
 22 recover actual, statutory and punitive damages according to proof at trial.

23 **ANSWER:** Defendant admits it received a letter purportedly on behalf of
 24 Plaintiff, but denies the remaining allegations in Paragraph 86.

25 87. To the extent the venue provision set forth in California Civil Code
 26 Section 1780(d) applies in federal court, venue in the County of Los Angeles in this
 27 District is proper because (a) defendants are doing business in Los Angeles County
 28 and within this District; and (b) based on the forum selection clause on MoFi's

1 website, which states in relevant part: "You agree that jurisdiction over and venue
 2 in any legal proceeding directly or indirectly arising out of or relating to this site
 3 (including but not limited to the purchase of Mobile Fidelity Sound Lab, Inc.
 4 products) shall be in the state or federal courts located in Los Angeles County,
 5 California." <https://mofi.com/pages/terms-and-conditions>.

6 **ANSWER:** Denied.

7 **PRAYER FOR RELIEF**

8 **ANSWER:** Defendant denies that Plaintiff is entitled to the relief set forth in
 9 the Prayer for Relief.

10 **AFFIRMATIVE DEFENSES**

11 Without waving or excusing the burden of proof of Plaintiff, or admitting
 12 that MoFi has any burden of proof, MoFi hereby asserts the following separate,
 13 additional, and alternative affirmative defenses.

14 **FIRST AFFIRMATIVE DEFENSE**

15 MoFi alleges that the SAC, and each and every alleged cause of action
 16 therein, fails to state facts sufficient to constitute a cause of action upon which relief
 17 can be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 The legal and statutory claims of Plaintiff are barred by the applicable
 20 statutes of limitations.

21 **THIRD AFFIRMATIVE DEFENSE**

22 This action is not a proper class action pursuant to Federal Rule of Civil
 23 Procedure 23 because: (1) Plaintiff has failed to plead, and cannot establish, the
 24 necessary procedural elements for class treatment; (2) a class action is not an
 25 appropriate method for the fair and efficient adjudication of the SAC's claims; (3)
 26 common issues of fact or law do not predominate; (4) Plaintiff's claims are not
 27 representative or typical of the putative class' claims; (5) Plaintiff is not the proper
 28 class representative; (6) Plaintiff and alleged putative class counsel are not adequate

1 representatives for the alleged putative class; (7) there is not a well-defined
 2 community of interest in the questions of law or fact affecting Plaintiff and the
 3 members of the alleged putative class; and (8) the alleged putative class is not
 4 ascertainable and its members are not identifiable.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiff's claims are barred, in whole or in part, because neither Plaintiff nor
 7 the putative class have sustained any losses or damages.

8 **FIFTH AFFIRMATIVE DEFENSE**

9 If Plaintiff or any putative class members have sustained any damages, which
 10 Defendant denies, such were not caused or contributed to in any manner by any
 11 fault, negligence, gross negligence, fraud, want of care, or lack of due diligence by
 12 Defendant, but were caused in whole or in part by the acts or omissions of others,
 13 whether individual, corporate or otherwise, whether named or unnamed in the SAC,
 14 and for whose conduct Defendant is not responsible.

15 **SIXTH AFFIRMATIVE DEFENSE**

16 If Plaintiff or any of the putative class members have sustained any damages,
 17 which Defendant denies, such were the result of intervening or superseding events,
 18 factors, occurrences or conditions, which were in no way caused by Defendant or
 19 anyone for whom it would be vicariously liable.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 If Plaintiff or any of the putative class members have sustained any damages,
 22 which Defendant denies, such damages were caused in whole or in part by
 23 Plaintiff's and the putative class' failure to mitigate damages.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 Neither Plaintiff, nor the putative class members, may seek restitution,
 26 disgorgement, or other equitable relief because Plaintiff alleges an adequate remedy
 27 at law.

28 **NINTH AFFIRMATIVE DEFENSE**

1 The claims of Plaintiff or the putative class members are barred, in whole or
 2 in part, by contractual terms and conditions that are applicable to the transactions
 3 alleged in this case.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Any alleged damages sustained by Plaintiff or the putative class members,
 6 which Defendant denies, were caused by non-parties, including potential
 7 indispensable parties, who have not been joined.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 The claims and/or alleged damages of Plaintiff or the putative class members
 10 are barred, in whole or in part, by the principles of waiver and estoppel.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 The claims and/or alleged damages of Plaintiff or the putative class members
 13 are barred, in whole or in part, by the defenses of unclean hands and/or laches.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 The claims and/or alleged damages of Plaintiff or the putative class members
 16 are barred, in whole or in part, because the named Plaintiff lacks standing.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 To the extent any of Plaintiff or the putative class members recover in this
 19 action, they have failed to properly state a claim for attorney's fees.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that Plaintiff or the putative class members seek to impose
 22 overwhelming and disproportionate liability (by way of the aggregate or mass
 23 litigation of punitive damages) in violation Defendant's substantive and procedural
 24 due process rights conferred in the Constitutions of the United States, the State of
 25 California, and by the substantive and due process rights conferred in any other
 26 Constitutions the Court may deem applicable.

27 **SIXTEENTH AFFIRMATIVE DEFENSE**

28 The claims of Plaintiff or the putative class members are barred, in whole or

1 in part, because neither Plaintiff nor the putative class members are not entitled to a
2 refund or repurchase.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 The claims of Plaintiff or the putative class members are limited
5 damages for accepted goods.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 Plaintiff's or the putative class members' claims for damages are subject
8 to reduction, to account for the value of Plaintiff's or the respective putative
9 class members' use and enjoyment of the subject records.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 Plaintiff or the putative class members are barred from asserting each
12 and every purported cause of action alleged in the SAC and from recovering
13 any damages from Defendant, because Plaintiff or the putative class members
14 would be unjustly enriched by any such recovery.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 Defendant's alleged failure to replace the subject records, or to refund
17 the purchase price for the subject records, was not willful.

18 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

19 The SAC, and each separate cause of action alleged in it, fails because
20 Plaintiff's or the putative class members' claims have been waived and
21 terminated by release, accord, satisfaction, and/or novation and are barred by
22 the doctrine of res judicata and/or collateral estoppel.

23 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

24 Certain claims asserted by Plaintiff or the putative class members fail as
25 a result of a lack of privity with Defendant.

26 **RESERVATION OF AFFIRMATIVE DEFENSES**

27 Defendant hereby gives notice that it intends to rely upon such other and
28 further affirmative defenses as may become available during discovery in this

1 action and reserve the right to amend its Answer to assert any such defenses.
2 Discovery in this matter has not yet commenced and Defendant may uncover
3 additional facts and/or evidence in support of these or other affirmative defenses.
4
5
6

7 **PRAYER**

8 **WHEREFORE**, MoFi prays for judgment against Plaintiff on his SAC as
9 follows:

- 10 1. That Plaintiff take nothing from his SAC;
 - 11 2. That the SAC against Defendant be dismissed in its entirety;
 - 12 3. For attorneys' fees and costs of defense;
 - 13 4. For such other and further relief as the Court deems is just and proper.
- 14

15 **JURY DEMAND**

16 Defendant demands a trial by jury on all issues so triable.

17 Dated: December 16, 2022

Barnes & Thornburg LLP

19 By: /s/ Alexandra S. Kelly

20 Alexandra S. Kelly
21 Brian Nguyen
22 Attorneys for Defendants
23 AUDIOPHILE MUSIC DIRECT,
24 INC. d/b/a Music Direct, a Nevada
25 Corporation; and MOBILE
26 FIDELITY SOUND LAB, INC., an
27 Illinois corporation
28